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11 **Batucha Investment Management Ltd.**

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13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**

15 IN RE VERIFONE HOLDINGS, INC.,
16 SECURITIES LITIGATION

) Case No. C 07-6140 MHP
)
)

17) Judge: The Hon. Marilyn H. Patel
18) Courtroom: 15
19)

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21 **NOTICE OF MOTION & MEMORANDUM OF POINTS AND AUTHORITIES IN**
SUPPORT OF CLAL FINANCE BATUCHA INVESTMENT MANAGEMENT, LTD.'S
22 **MOTION TO CORRECT THE AUGUST 22, 2008 ORDER**
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1 **TO: ALL PARTIES AND THEIR COUNSEL OF RECORD**

2 **PLEASE TAKE NOTICE** that CLAL Finance Batucha Investment Management, Ltd.
 3 (“CLAL”) moves this Court, the Honorable Marilyn H. Patel in Courtroom 15 of the United
 4 States District Court for the Northern District of California, 450 Golden Gate Avenue, San
 5 Francisco, California 94102, pursuant to Fed. R. Civ. P. 60(a) to correct the Order dated August
 6 22, 2008 (the “August 22 Order”) which found that CLAL was potentially subject to a unique
 7 defense as a possible “day trader.”

8 This Motion is made on the grounds that the August 22 Order – by omission or oversight
 9 – did not consider material facts in finding that CLAL was vulnerable to a “unique day-trader
 10 defense,” and is based on the notice of motion, the memorandum of points and authorities in
 11 support thereof, the Declaration of Yossi Alharal, the pleadings and other files herein and such
 12 other written and oral arguments as may be presented to the Court.

13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 A day-trader is defined as “[a] stock trader who holds positions for a very short time
 15 (from minutes to hours) and makes numerous trades each day. Most trades are entered and
 16 closed out within the same day.’ Investopedia.com/terms/d/daytrader.asp.” *Schreiber v.*
 17 *Worldco, LLC*, 324 F. Supp. 2d 512, 515 (S.D.N.Y. 2004). *See also* Forexforum.net/forex-
 18 glossary/day-trader.htm (“speculators who take positions which are then liquidated prior to the
 19 close of the same trading day”); Meriam-webster.com/dictionary/day%trader (“a speculator who
 20 seeks profit from the intraday fluctuation in the price of a security or commodity by completing
 21 double trades of buying and selling or selling and buying covering a single session of the
 22 market”). The Securities and Exchange Commission states that “true day traders do not own any
 23 stocks overnight because of the extreme risk that prices will change radically from one day to the
 24 next, leading to large losses.” *See* www.sec.gov/investor/pubs/daytips.htm. Thus, “by strict
 25 definition, the day trader buys stocks each day and sells all shares of those stocks before the close
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1 of each day. The day trader does not own any positions at the close of the day.”

2 Whentobuy.com/DayTrading.htm.

3 The August 22 Order states that CLAL “could be subject to a unique defense,” as it “may
4 have an account that is a day-trader.” August 22 Order at 15. In reaching this conclusion, the
5 Court analyzed the number trades in one CLAL account – account number 248004 – and
6 remarked that it “amounts to an average of over eight trades a day for a significant portion of the
7 class period.” *Id.* (underscore added). As the definitions above attest, trading on a daily basis is
8 not the same as being a “day trader.” One of the key elements to “day trading,” as noted by the
9 SEC, is that such traders clear their position in the security in which they are trading on a daily
10 basis; they “do not own any stocks overnight.” *See* www.sec.gov/investor/pubs/daytips.htm.

11 The same trade information referenced by the Court for account number 248004 in the
12 August 22 Order contained data which evinces that CLAL did not close out its positions on a
13 daily basis, nor on any days in which it made intraday trades. *Id.*, citing Dahlstrom Dec., Exh. B
14 at Attachment 1. Moreover, account number 248004 maintained a sizeable position in Verifone
15 common stock throughout most of the period it was buying and selling, and maintained a long
16 position throughout the last three months of the Class Period.

17 By definition, therefore, account number 248004 was not a day trading account, and none
18 of the other CLAL accounts evidence transactional information that satisfy the definition of a
19 “day trader.”
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21 CLAL advised in open court during the hearing on the motion for appointment of lead
22 plaintiff that, contrary to the allegations of day trading, “[T]hey are not a day trader.” *In re*
23 *Verifone Holdings, Inc., Secs. Litig.*, No. C 07-6140 MHP, Transcript of Proceedings at 28:17
24 (Cal. N.D. March 17, 2008). That representation was made upon discussion with Yossi Alharal,
25 CLAL’s Chief Executive Officer, who was present at the hearing on March 17, 2008 (*id.*, at
26 20:24-21:5), and has further attested to the fact none of the accounts proffered on behalf of
27

1 CLAL's motion used a day trading investment strategy or were managed by day traders. *See*
2 Declaration of Yossi Alharal, submitted herewith.

3 There is no evidence on the record to support a finding that any of the CLAL accounts
4 were "day trading" Verifone common stock; *a fortiori* neither CLAL nor any of its accounts
5 could be subject to any unique defense based on being a day-trader or incorporating a day trading
6 investment strategy. Accordingly, CLAL requests that the Court grant its motion and correct the
7 record to reflect that CLAL was not subject to a unique defense as a possible day trader.

8 CLAL seeks this correction to conform the Order to the facts and to protect itself from the
9 prejudice that could inure from the misunderstanding that its accounts are subject to day trading
10 regulations in the United States and Israel. "Day trading" is regulated by the New York Stock
11 Exchange and NASDAQ, which, *inter alia*, have specific funding requirements for day trading
12 accounts. *See, e.g.*, Financial Regulatory Industry Regulatory Authority (FINRA) Rule 2520,
13 Day Trading Margin Requirements. The accounts listed in support of CLAL's motion for lead
14 plaintiff are not subject to such regulations and should not be misunderstood as being regulated
15 by rules such as FINRA 2520. Correcting the August 22 Order would conform the Order with
16 the facts (*i.e.*, with the data and the definition of "day trader"), and remove any prejudice that the
17 attribution of "day trader" may have on CLAL's accounts under market regulations in the United
18 States and Israel.

19 CONCLUSION

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21 For the reasons stated herein, CLAL respectfully requests the Court grant its motion and
22 correct the August 22 Order.

1 Dated: September 8, 2008

2 Respectfully submitted,

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